



1                   RELEVANT BACKGROUND

2           The Debtors filed a Chapter 7 petition commencing the present case on November 16, 2016. The  
3 Debtors' bankruptcy Schedules A and D filed with the petition lists their residence located in the Sunset  
4 Hills neighborhood of Ballard in Seattle at 3624 NW 65<sup>th</sup> Court (the, "Property") with fair market value  
5 of \$1.15 million and subject to secured claims totaling about \$1.47 million. ECF Dckt# 1 at pp. 8, 21.  
6 The Trustee investigated the assets listed in the Debtors' bankruptcy schedules including the Property  
7 and the Debtors' financial affairs; and examined the Debtors at their creditors' meeting. Trustee's  
8 Declaration at 1, lines 26-27 and at 2, lines 1. The Trustee's investigation included consultations about  
9 the Property with experienced real estate agents, Chad Tharp and Tyrone Bafaro of Keller Williams  
10 Eastside, whom he employed upon Court order entered on April 19th. Id. at 2, lines 1-4.

11           Based upon the Trustee's investigation, the advice of Messrs. Tharp and Bafaro, his more than  
12 25 years experience as a trustee in valuing and selling real estate, and taking into account all other  
13 relevant factors, the Trustee determined that the Estate has non-exempt equity in the Property and that  
14 the Property is of consequential value and not burdensome to the Estate. The evaluation the Trustee  
15 received from Messrs. Tharp and Bafaro is that the Property has a value of at least \$1.65 million and that  
16 the Property will likely attract multiple competing bids that could result in a higher sale price. Id. at 2,  
17 lines 15-17; and Bafaro Declaration at 2, lines 7-9.

18           The real estate market in Seattle tops the nation in home price growth and appreciation.  
19 Trustee's Declaration at 2, lines 19-20. A May 30, 2017 news story published in the Seattle Times (a  
20 copy of which is attached to the Trustee's Declaration as Exhibit A) reports that Seattle metro area  
21 home prices increased by 12.3% over a one year period, the fastest growth in more than three years. Id.,  
22 lines 21- 25. Data collected by Redfin, according to the Times report shows that "about 90 percent of  
23 houses for sale in the city of Seattle over the last two months wound up in a bidding war" which is the  
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1 most since records began at the start of this decade. Id., lines 26- 27 and at 3, line 1. The demand for  
2 homes in Seattle remains extremely high while inventory remains low. Trustee's Declaration at 3, line  
3 4; and Bafaro Declaration at 2, lines 7-8.

4 The Property has a view of Elliott Bay which the Trustee's agents advise him is one of the best  
5 views if not the best view in the Sunset Hills neighborhood. Trustee's Declaration at 3, lines 6-7; and  
6 Bafaro Declaration at 2, lines 3-4. In addition, it appears that the view cannot be blocked since the  
7 properties across from it are situated at quite a lower grade. Trustee's Declaration at 3, lines 7-9.

9 The Trustee's agents recently listed the Property with the Multiple Listing Service ("MLS").  
10 The listing has attracted a great deal of attention and interest. Id., lines 10-11; and Bafaro Declaration at  
11 2, lines 10-11. The Trustee's agents, in consideration of requests of the Debtors and as a courtesy to  
12 them, have not posted a "for sale" sign on the Property; and included as part of the MLS listing  
13 instructions for buyers' agents to call the Debtors 24 hours ahead of the desired showing. Bafaro  
14 Declaration at 2, lines 14-17. The agents have received verbal and written reports from buyer agents  
15 that the Debtors have acted uncooperatively with the Estate. Id., lines 20-21. The reports show that (a)  
16 Ms. Davis told a buyer's agent that the Trustee would be abandoning the Property after a Court hearing  
17 on the Motion; (b) the Debtors have been slow in returning the calls of buyer's agent who want to show  
18 the Property; and (c) Mr. Davis has made negative statements during a showing apparently to discourage  
19 offers. Id., lines, 20-26.

22 The secured claims consists of a first deed of trust for approximately \$1.3 million and junior  
23 deeds of trust that appear to belong to insiders of the Debtors aggregating to about \$479,000. Trustee's  
24 Declaration at 3, lines 22-24. There is a question about the legality of the loan related to the first deed  
25 of trust in as much as it includes an adjustable rate rider that allows interest to increase to as much as  
26 16.3%. Id., lines, 25-26. The Estate thus has potential claims under Washington usury law in regard to  
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TRUSTEE'S OPPOSITION - 3

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1 the first deed of trust. Id., lines 26-27. There is also evidence that the junior liens are subject to  
2 avoidance or invalidation because the underlying loan interest is 15% and the demand notes for the loans  
3 are older than six years with the Debtor having apparently made few if any payments. Id. at 3, line 27  
4 and at 4, lines 1-3. The Trustee expects to determine appropriate action at a later date to address the  
5 foregoing matters. Id. at 4, lines 3-4.

#### 6 7 ARGUMENT

8 A motion to abandon property of the estate is governed by 11 U.S.C. §554(b) which provides for  
9 abandonment if the property is (1) burdensome to the estate or (2) of inconsequential value and  
10 inconsequential benefit to the estate. *In re Viet Vu*, 245 BR 644 (9<sup>th</sup> Cir. BAP 2000); and *Morgan v.*  
11 *K.C. Mach. & Tool Co.* (In re K.C. Mach. & Tool Co.), 816 F.2d 238, 245 (6<sup>th</sup> Cir.1987). It is well  
12 established that the party bringing the motion to compel abandonment has the burden of proof. *In re*  
13 *Viet Vu*, supra at 647. Abandonment is not available where administration of property of the estate  
14 promises a potential benefit to creditors. *Morgan v. K.C. Mach. & Tool Co.*, supra at 247.

16 The Property is neither burdensome to the estate nor of inconsequential value or benefit to the  
17 estate. The Property has one of the best views in the highly sought after Sunset Hills neighborhood of  
18 Ballard. In addition, it appears that the view is not subject to blockage since the properties across from  
19 it are at a lower grade. The Trustee has listed the Property with the MLS; and the listing has attracted a  
20 great deal of attention and interest. The Property has a value of at least \$1.65 million and it is likely that  
21 there will be competitive bids which could result in a higher sale price.

23 The Debtors, who may have intentionally understated the value of the Property listed its value in  
24 their originally filed schedules at \$1.15 million. But admit in the Motion that the Property is actually  
25 worth \$1.65 million or \$500,000 more than what they stated on the date of bankruptcy filing.  
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TRUSTEE'S OPPOSITION - 4

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1 The Estate has claims with respect to both the senior deed of trust and the junior deeds of trust  
2 which are further establishes that the Property is of consequential value to the Estate. All of the loans  
3 secured by the deeds of trust appear to have been based upon interest rates that are usurious under State  
4 law which gives rise to a damage claim for the Estate. 11 USC §558; and see RCW 19.50.030. The  
5 junior deeds of trust are subject to avoidance and/or invalidation since it appears that that the Debtors  
6 failed to make any payments on the underlying demand notes which under the six year statute of  
7 limitation (RCW 4.16.040) renders the secured claims unenforceable. RCW 7.28.300 (a mortgage is  
8 void if the debt is void); and *Walcker v. Benson & McLaughlin*, 79 Wash.App. 739 (1995).

10 The Debtors do not come before the Court with “clean hands.” They have failed to cooperate  
11 with the Trustee’s agents in showing and marketing the Property, failing to timely respond to calls of  
12 buyers’ agents and running interference by making comments to potential buyers to discourage their  
13 interest. It is thus disingenuous of the Debtors to argue that the Estate cannot realize value for the  
14 Property or that it should be abandoned. The Trustee is entitled to unfettered access to the Property and  
15 to have the time needed to show and market it.

17 The Debtors’ true focus in the Motion is primarily on their own benefit even though their  
18 schedules show that they lack sufficient income to service the mortgage on the Property. By its terms  
19 Section 554(b) centers on the interest of the bankruptcy estate. It says nothing about the interest of a  
20 debtor. The interest of the estate, not the interest of the debtor is the primary consideration in evaluating  
21 whether property of the estate should be abandoned. *In re Johnson*, 49 F.3d 538, 541 (9<sup>th</sup> Cir. 1995).  
22 The Trustee has shown beyond serious question that it is not in the Estate’s best interest to abandon the  
23 Property. The Property is thus not of inconsequential value or burdensome to the Estate and thus there  
24 are no grounds for granting the Motion.  
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TRUSTEE’S OPPOSITION - 5

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1                   CONCLUSION

2                   The Debtors have failed to meet their burden of proving the existence of grounds for  
3 abandonment pursuant to §554(b). Therefore, the Motion must be denied.

4                                   Dated this 2nd day of June, 2017

5                                   KRIEGMAN LAW OFFICE, PLLC

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8                                   /s/ Bruce P. Kriegman  
9                                   Bruce P. Kriegman, WSBA# 14228  
10                                  Attorneys for Trustee